

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.:

04-12317 WGY

AMERICAN TOWER CORPORATION,
Plaintiff,

v.

J.L.B. CONSTRUCTION, INC., 21ST
CAPITAL CORPORATION, PRIME
COMMUNICATIONS, LLC, AMF
ELECTRICAL CONTRACTORS, INC.,
HEINZ CORPORATION, DANIEL
WENESS CONSTRUCTION,
WESTERN STATES TOWER, LLC,
WEST CENTRAL CONSULTING
SERVICES, INC., STEWART
ELECTRIC, INC., GLOBAL TOWER
SERVICE, ADVANCED LIGHTNING
TECHNOLOGY, INC. and GULF
COAST STEEPLEJACK,
Defendants.

RESPONSE TO CLAIM

NOW COMES, JLB Construction Inc., Defendant with response to claim made
By Plaintiff, American Tower Corporation.

FACTUAL BACKGROUND

18. Under this article 9.1 of the Agreement, JLB Construction is to receive payment
Within 45 days of completion of the site.

19. Pursuant to article 4.7.1 of the Agreement, JLB did not have to secure in writing
That the uses of Subcontractors were needed. American Tower Employees Authorized
this
verbally when ATC knew JLB needed to utilize outside sources for Electrical

Licensing and Permitting.

21. Had American Tower complied with their contracts JLB Subcontractors would have not made claim. JLB Subcontractors knew that they were under the same payment as JLB. American Tower did not comply with their Agreement terms of payment within 45 days.
22. American Tower would not be incurring fees if they complied with said Agreement.

The Purchase Orders, Sites and Subcontractors

23. Contract Price is Correct
24. Prime, JLB Subcontractor is Contracted at an amount of Thirteen Thousand Seven Hundred Dollars (\$13,700).
25. American Tower Debit of Three Thousand Dollars will be incurred by Prime
26. Prime is owed a balance of Ten Thousand Seven Hundred Dollars (\$10,700) and JLB owed a balance of Three Thousand Eight Hundred Dollars (\$3,800).
27. Contract Price is Correct
28. Project amount, Subcontractor and Material Man are Correct
30. JLB Owed a balance of Three Thousand Nine Hundred Forty Four Dollars and Fifteen Cents (\$3944.15)
31. Contract Price is Correct
32. Prime has a balance of Zero Dollars
34. Correct
35. Contract Price is Correct
36. Correct Payment to Global
38. JLB is owed a balance of Three Thousand four hundred fifty dollars (\$3450)
39. Contract Price is Correct

40. WCCS was the JLB Subcontractor on this site. WCCS was Contracted for an Amount of Sixteen Thousand Five Hundred dollars (\$16,500). WCCS failed to complete Project and JLB Contracted Prime Communications and Stewart Electric to Perform at WCCS Cost and was contracted at Three Thousand Five Hundred seventy six dollars and Fifty Cents (\$3,576.50) and Stewart Electric at One Thousand Thirty Three Dollars and Sixty Two Cents (\$1033.62). Advanced is owed Five Thousand Six Hundred Ninety Dollars and Eighty Nine Cents (\$5,690.89) for materials used to complete tasks for Cleveland, Sunflower, Forney, and Nacogdocuis sites.

41. Gulf Coast was the Subcontractor of WCCS, and is owed by WCCS.

42. WCCS is owed Eleven Thousand Eight Hundred Eighty Nine Dollars and Eighty Eight Cents (\$11,889.88), Prime Contracting is owed, minus ATS Debits, Two Thousand Four Hundred Four Hundred Seventy Six Dollars and Fifty Cents (\$2476.50), Stewart Electric is Owed One Thousand Thirty Three Dollars and Sixty Two Cents (\$1033.62), Advanced is owed Five Thousand Six Hundred Ninety Dollars and Eighty Nine Cents (\$5690.89), and JLB has a negative balance of One Thousand Eight Hundred Ninety Dollars and Eight Nine Cents (-\$1890.89). JLB has debits to WCCS for JLB Employees Services of a time period of one week, with 3 guys to finish the Construction Site Trenching, assisting Stewart Electric, Materials, Assembly of Platform, and Site Clean Up and Gravel, Garbage Removal. Debit to WCCS the amount of Seven Thousand Five Hundred Dollars (\$7500). Making WCCS final Amount Owed Four Thousand Three Hundred Eighty Nine Dollars and Eighty Eight Cents (\$4,389.88) and JLB a Balance of Five Thousand One Hundred Nine Dollars and Eleven Cents (\$5109.11).

JLB Construction Inc

2327 Falls Ave.
Suite 4
Waterloo, Iowa 50701
Phone 319-232-6704 Fax 319-232-6774
Toll Free 866-234-6704

PURCHASE ORDER

The following number must appear on all related correspondence, shipping papers, and invoices:

P.O. NUMBER: (100531)

Date: 3/17/04

To: Threkeld Tower Services

Vendor ID:

Requested by	Start / Completion Date	Project Name / Description	Terms	Amount
Jacob Davis	3/17/04	Cleveland STA-G523	Net 30	16,500

Terms: Invoice at time of turning in Close outs

All work is to be completed in accordance with all local, state, federal, and OSHA guidelines. Project shall commence on the given date above and will be completed by the Vendor within the time deemed, per this PO, unless obstacles that are out of the Vendor's control arise. If any Change order's present themselves, Vendor will submit in writing an additional amount of funds to accommodate the Change. Vendor will not pursue any changes until they have been given written permission, for if the Vendor does pursue the changes without written consent the Change Order will become void. The Vendor will comply with the terms and conditions of the Master Service Agreement and will comply with the rules set forth in the Agreement.

Authorization:

The above listed vendor is authorized to perform the services of: Preform turn-key service on co-locate as per scope in prints. Threkeld is to provide all materials (except L&A install materials supplied by ATC), labor, electric permits and inspections (if required), and nessasary paper work required for close- out package.

1. Please send one copy of your invoice.
2. Please notify us immediately if you are unable to perform
3. **Send all correspondence to:**
JLB Construction Inc
2327 Falls Ave., Suite 4
Waterloo, Iowa 50701
Phone 319-232-6704 Fax 319-232-6774

Victor Terry _____ Operations Manager
Authorized by _____ Title

43. Contract Price is Correct

44. WST was JLB Subcontractor with a Contract Amount of Five Thousand Dollars (\$5000), Prime was requested by JLB to finish the Project at WST Expense. Prime Amount owed is Four Thousand Two Hundred Sixty Five Dollars and Fifty Cents (\$4,265.50).

45. JLB owes WST Seven Hundred Thirty Four Dollars and Fifty Cents (\$734.50) and Prime, after ATC Debits, Two Thousand One Hundred Sixty Five Dollars and Fifty Cents (\$2,165.50).

46. Contract Price is Correct

47. Subcontractors are Correct and Amounts are Correct

48. JLB is owed Six Thousand Four Hundred Dollars (\$6,400)

49. Contact Price is Correct

50. Global was Original Contractor for this site. Global did not perform any service to site, other than deliver materials. Global is being compensated One Thousand Five Hundred Dollars (\$1500) For delivery of the Materials. Prime was contracted for Twelve Thousand Dollars (\$12,000) and was given a Change Order One Thousand Two Hundred Fifty Dollars for the use of a Gin Pole, making their Total Thirteen Thousand Two Hundred Fifty Dollars (\$13,250)

51. ATC Debit Carriers over to Prime Communications

52. Balance Owed to Prime is Nine Thousand Six Hundred Fifty Dollars (\$9,650), Global is owed One Thousand Five Hundred Dollars (\$1500) and JLB is owed Three Thousand Two Hundred Fifty Dollars (\$3,250).

53. Contract Price is Correct

54. Prime was Contracted for Six Thousand Four Hundred Dollars (\$6,400) and AMF

Was Contracted for Fifteen Thousand Eight Hundred Dollars (\$15,800)

56. ATC debit to pass over to Prime Communications
57. Prime is owed Two Thousand Eight Hundred Ninety Five Dollars (\$2,895), JLB has a negative balance of two Thousand Seven Hundred Dollars (-\$2,700)
58. Contract Price is Correct
59. WST was the original Subcontractor of JLB and is owed a balance of One Thousand Five Hundred Dollars and Prime Contract amount was for Six Thousand Dollars (\$6,000)
60. With ATC Debits, Carried Over to Prime, Prime is Owed Four Thousand Eight Hundred Dollars (\$4,800), WST is Owed One Thousand Five Hundred Dollars (\$1,500) and JLB is Owed One Thousand Five Hundred Dollars (\$1500).
61. Contract Price is Correct
62. WST was Contracted for Four Thousand Two Hundred Dollars (\$4,200)
63. With ATC Debits WST is Owed Three Thousand One Hundred Dollars (\$3,100) and JLB has a negative balance of Three Thousand One Hundred Dollars (-\$3,100).
64. Contract Price is Correct
65. Daniel Weness is JLB Subcontractor and is owed Three Thousand Eight Hundred Dollars (\$3,800)
66. JLB has a negative balance of Three Thousand Eight Hundred Dollars (\$3,800)
67. Contract Price is Correct
68. Correct Subcontractors and Amounts
69. JLB is Owed One Thousand Two Hundred Dollars (\$1,200)
70. Contract Price is Correct

71. Correct Subcontractor and Amount
72. JLB is Owed a balance of One Thousand Two Hundred Dollars (\$1,200)
73. Contract Price is Correct
74. Subcontractors and Amounts are Correct
76. JLB is Owed a balance of Five Thousand One Hundred Seventy Four Dollars and Fifty Five Cents (\$5174.55)
77. Contract Price is Correct
78. Subcontractor and Amount is Correct
80. JLB is Owed Two Thousand Five Hundred Dollars (\$2,500)
81. Contract Price is Correct
82. Prime was the original Subcontractor and Contract Amount was Six Thousand Four Hundred Dollars (\$6,400), AMF was Subcontractor for JLB at the Expense of Prime For Completion of the Project and they are owed Seven Hundred Sixty Five Dollars (\$765) and Heinz Corporation Never Performed on this project.
83. Debit From ATC carries over to Prime
84. JLB has Paid Prime Six Thousand Four Hundred Dollars (\$6,400), AMF is owed Seven Hundred Sixty Five Dollars (\$765) and JLB has a Credit from Prime for Three Thousand One Hundred Forty Four Dollars (\$3,144) to compensate debits for ATC and AMF.
85. Contract Amount Correct
86. Subcontractor and Contract Amount Correct
87. JLB is Owed a balance of Four Thousand Seven Hundred Ninety Seven Dollars (\$4,797)
88. Contract Amount Correct

JLB Construction Inc

2327 Falls Ave.
Suite 4
Waterloo, Iowa 50701
Phone 319-232-6704 Fax 319-232-6774
Toll Free 866-234-6704

PURCHASE ORDER

The following number must appear on all related Correspondence, shipping papers, and invoices:

P.O. NUMBER: (100532)

Date: 3/17/04

To: Threkeld Tower Services

Vendor ID:

Requested by	Start / Completion Date	Project Name / Description	Terms	Amount
Jacob Davis	3/17/04	Sunflower G580	Net 30	31,000.00

Terms: Invoice at time of turning in Close outs

All work is to be completed in accordance with all local, state, federal, and OSHA guidelines. Project shall commence on the given date above and will be completed by the Vendor within the time deemed, per this PO, unless obstacles that are out of the Vendor's control arise. If any Change orders present themselves, Vendor will submit in writing an additional amount of funds to accommodate the Change. Vendor will not pursue any changes until they have been given written permission, for if the Vendor does pursue the changes without written consent the Change Order will become void. The Vendor will comply with the terms and conditions of the Master Service Agreement and will comply with the rules set forth in the Agreement.

Authorization:

The above listed vendor is authorized to perform the services of: Perform turn-key service on co-locate as per scope in prints. Threkeld is to provide all materials (except L&A install and steel platform materials supplied by ATC), labor, electric permits and inspections (if required), and necessary paper work required for close- out package. Furnish and Install modification materials as per design.

1. Please send one copy of your invoice.
2. Please notify us immediately if you are unable to perform
3. **Send all correspondence to:**
JLB Construction Inc
2327 Falls Ave., Suite 4
Waterloo, Iowa 50701
Phone 319-232-6704 Fax 319-232-6774

Victor Terry _____ Operations Manager
Authorized by _____ Title

89. Subcontractor and amount are correct
90. Debit is Carried over to AMF
91. AMF is owed a balance of Eleven Thousand Ninety Eight Dollars (\$11,098)
92. Contract Price is Correct
93. Prime is JLB Subcontractor and contract amount was Five Thousand Eight Hundred Dollars (\$5800). AMF was Retained by JLB to Finish Project and AMF was Contracted for One Thousand Fifty Five Dollars (\$1,055)
95. Debit is carried over to Prime
96. Prime is Owed Three Thousand Five Hundred Seventeen Dollars (\$3,517) and and JLB is Owed Two Thousand Seven Hundred Dollars (\$2,700)
- 97./ 101. Contract Price was Correct (Combined Response)
98. WCCS was JLB Subcontractor for Twenty Six Thousand Dollars (\$26,000) and given a Five Thousand Dollar Change Order (\$5000) Making the Total Project Amount Thirty one Thousand Dollars (\$31,000). Prime was requested by JLB to perform services At WCCS cost and the amount Contracted to Prime was Six Thousand Two Hundred Nineteen Dollars and Fifty Cents (\$6,219.50) Stewart Electric was Subcontractor to WCCS for the amount of Eight Thousand Two Hundred Eighty Two Dollars and Fifty Cents (\$8,282.50) and is Deducted from WCCS.
99. Gulf Coast was Subcontracted by WCCS
100. WCCS is owed Sixteen Thousand Four Hundred Ninety Eight Dollars (\$16,498), Stewart Electric is owed Eight Thousand Two Hundred Eighty Two Dollars and Fifty Cents (\$8,282.50), Prime is owed Four Thousand Four Hundred Nineteen Dollars and Fifty Cents (\$4,419.50), due to ATC Debits Carried over to Prime and JLB is owed Four Thousand One Hundred Fifty Five Dollars (\$4,155).

103. Contract Price is Correct
104. Subcontractors and Amounts are Correct
105. JLB is Owed Five Thousand Twenty Three Dollars and Thirty Four Cents
(\$5023.34)

COUNTER CLAIM

NOW COMES, the Defendant JLB Construction Inc., and makes request for claim against the Plaintiff, American Tower Corporation for the specific items below:

1. American Tower Debits Total an Amount of Thirty Two Thousand Fifty Dollars that JLB and Subcontractors have been debited without any detailed, specific information. In addition any interest that the court may deem.
2. For JLB Invoice Number 100005804, American Tower PO# 50122, Project Number 21784, Being Site Name "Atlas Trucking" for the amount of Nine Thousand One Hundred Dollars (\$9,100), of Which Heinz Corporation is owed Eight Thousand Two Hundred Dollars (\$8,200)
3. For JLB Invoice 100005803, American Tower PO# 50273, Project Number T084 for the Amount of Five Thousand Dollars (\$5,000)
4. For JLB Invoice 100005852, American Tower Purchase Number 51646,
5. For JLB Invoice 100005841, American Tower PO# 53476, Project Number 21785 For the Amount of Five Hundred Dollars (\$500)
6. For JLB Invoice 10005838, American Tower PO # 53562, Project Number 22849 for the Amount of Eighteen Thousand Dollars (\$18,000)
7. For JLB Invoice 10005852, American Tower PO #51646 Project Number T038 for the Amount of Five Thousand Dollars (\$5,000)
8. For JLB Invoice 100005832, American Tower PO # 52606, Project Number 22842 for the Amount of Seven Thousand Dollars (\$7,000)
9. For JLB Invoice 100005828, American Tower PO #, 52636 Project Number 22768 for the Amount of Eight Hundred Dollars (\$800)
10. For JLB Invoice 100005826 American Tower PO # 53223 Project Name Graytak for the Amount of Three Thousand Dollars (\$3,000)
11. For Additional Costs for the Sites of Brownsville, Perdidio, And UWF Hospital for the Supplying of Generators to run the sites due to Another Party not completing the required documentation for the Power Company. This was not found to days previous by A&J Electric, to the completion of the Sites. ATC, Troy Bell Requested JLB to provide (was not per the scope of work). JLB is seeking Nine Thousand Dollars (\$9,000) to cover the costs endured.
12. For Additional Costs at Site Nacogdocuis, JLB was required to perform "ratcheting" of the tower, which means there were loose bolts that had to be tightened in order to ensure safety. Scott Kirk and Dean Strong were notified and we submitted the appropriate change order and were told that it was approved by Dean Strong. The amount that was endured was Three Thousand Dollars (\$3,000)
13. For Additional Costs on Nacogdocuis site, TNT, JLB Subcontractor was

JLB Construction Inc. Job Debits

Project Manager	Site Name	Site Number	ATC Job Number	Sweeps	Removal	Omni	Photos	Close-Out Docs.	Total Debited
Bell, Troy	Saraland Chapel	MO43	22789	\$ 1,200.00	N/A	N/A	N/A	\$ 300.00	\$ 1,500.00
Bell, Troy	Church	MO04	22791	N/A	N/A	\$ 600.00	\$ 300.00	\$ 900.00	
Bell, Troy	Bayou Labatre	MO02	22792	\$ 1,200.00	\$ 1,500.00	N/A	\$ 300.00	\$ 3,000.00	
Bell, Troy	Fowl River	MO06	22793	\$ 1,200.00	\$ 1,500.00	\$ 600.00	\$ 300.00	\$ 3,600.00	
Bell, Troy	Mauvilla	MO49	22794	\$ 1,200.00	\$ 1,500.00	N/A	N/A	N/A	\$ 2,700.00
Bell, Troy	Claiborne	MBL613	22799	\$ 1,200.00	\$ 1,500.00	\$ 600.00	\$ 300.00	\$ 3,600.00	
Bell, Troy	Milton East	PE39	22886	\$ 1,200.00	N/A	N/A	N/A	N/A	\$ 1,200.00
Merritt, Carl	Hwy 25	C554	22768	\$ 1,200.00	N/A	\$ 200.00	\$ 300.00	\$ 1,700.00	
Merritt, Carl	Sunflower	G580	22770	\$ 900.00	N/A	\$ 600.00	\$ 300.00	\$ 1,800.00	
Merritt, Carl	Cleveland	G523	22840	\$ 600.00	N/A	\$ 200.00	\$ 300.00	\$ 1,100.00	
Merritt, Carl	Columbus	C501	22842	\$ 1,200.00	N/A	\$ 600.00	\$ 300.00	\$ 2,100.00	
Merritt, Carl	I-59 N	H524	22847	\$ 600.00	N/A	\$ 200.00	\$ 300.00	\$ 1,100.00	
James Westberry,	Graytak		21785	\$ 2,452.00	N/A	\$ 1,053.00	N/A	\$ 3,505.00	
James Westberry,	Roofers Supply		22552	N/A	N/A	\$ 1,053.00	\$ 175.00	\$ 1,228.00	
James Westberry,	MLK		21735	\$ 702.00	N/A	\$ 1,579.00	\$ 210.00	\$ 2,491.00	
James Westberry,	China Wok		22680	N/A	N/A	N/A	\$ 175.00	\$ 175.00	
James	Nordyne B		21765	N/A	N/A	\$ 351.00	N/A	\$ 351.00	